



August 29, 2002

Mr. Bob Ramirez  
Escamilla & Poneck, Inc.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2002-4856

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167932.

The San Antonio Independent School District (the “district”), which you represent, received a request for information relating to a particular bid concerning “built-up roofing” at three named schools. You state that the district will release as soon as possible public documents requested and not subject to the stated exceptions. *See* Gov’t Code §552.221(a); Open Records Decision Nos. 665 (2000), 467 at 6 (1987) (governmental body may take a reasonable amount of time to produce information). You claim that the submitted information is excepted from disclosure under section 552.107(1) of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We turn now to your arguments under section 552.107(1). Section 552.107(1) of the Government Code excepts information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990).

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<sup>1</sup>You raised section 552.103 in your June 26, 2002 correspondence to this office. However, in your July 3, 2002 brief to this office, you state that the district does not assert this exception.

Section 552.107(1) protects only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. We determine the applicability of section 552.107(1) on a case-by-case basis. After review of the information at issue, we agree that the information reflects either client confidences or an attorney's legal advice or opinions. The district may therefore withhold the information we have marked under section 552.107(1).

We note that the submitted information contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." *See* Gov't Code § 552.137(a). As there is no indication that the individuals to whom the e-mail addresses belong have consented to their release, the district must withhold the e-mail addresses in the submitted information that we have marked under section 552.137 of the Government Code. *See* Gov't Code § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release). We note, however, that the requestor in this case provided one of the e-mail addresses appearing in the submitted information. The requestor has a special right of access to his e-mail address under section 552.023. Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Therefore, the district must release to the requestor his own e-mail address.

In summary, the district may withhold the information we have marked from disclosure under section 552.107(1). The district must withhold from disclosure the e-mail addresses we have marked under section 552.137. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 167932

Enc: Submitted documents

c: Mr. Bradford D. Beldon, President  
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(w/o enclosures)